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**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Mildred C. Auchard - Disposition of Retired Pay  
and Survivor Benefit Plan Payments

**File:** B-234425

**Date:** May 30, 1989

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### DIGEST

The estate of a widow to whom the Army owed \$6,572.92 in unpaid retirement pay and Survivor Benefit Plan payments was closed before her executrix claimed that amount. In accordance with Kansas law, the estate should be reopened under an administrator de bonis non, who may then claim the money and distribute it according to the terms of the widow's will.

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### DECISION

This decision is in response to a claim forwarded by the U.S. Army Finance and Accounting Center (Finance Center), Indianapolis, Indiana, concerning the disposition of unpaid retirement pay and Survivor Benefit Plan (SBP) payments due the late Mildred C. Auchard, widow of Virgil M. Auchard, M.D., USA Retired.

Virgil Auchard died on October 12, 1984. Upon his death, Mildred C. Auchard was entitled to 12 days of her husband's retired pay plus monthly SBP payments. On March 15, 1985, her daughter, Arlene Anderson, claimed those amounts for her by power of attorney, but the Finance Center rejected the power of attorney. By the time of her death on July 9, 1985, Mrs. Auchard was entitled to the 12 days of Dr. Auchards' retired pay (\$545.72) plus SBP payments amounting to \$6027.20. She was survived by Arlene Anderson and five other children. Mrs. Auchard, a Kansas resident, left a will, which was probated in Kansas, and Arlene Anderson was executrix of the estate. She was discharged as executrix on August 18, 1986, after final settlement of the estate. On February 24, 1988, Arlene Anderson filed a claim for the retired pay and SBP entitlements on behalf of herself and her siblings.

Our decision B-91048, Dec. 19, 1949, involved similar facts. A widow claimed the accrued pay owed to her husband.

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His will had already been probated in Minnesota, and the executrix had been discharged after final settlement of the estate. Instead of paying the widow, we required that the money be paid to an administrator de bonis non, an administrator appointed by the court to handle property found after an estate is settled, to be distributed according to the terms of the Decree of Distribution for the estate.

Our decision in this case must be in accord with laws of Kansas. See B-187121, Apr. 13, 1977. The Kansas Statutes Annotated (K.S.A.) provides a procedure for distributing property which was not included in the settlement of an estate. Section 59-1501 of K.S.A. (1983) provides for an administrator de bonis non. Section 59-1501a of K.S.A. (1988) states that "[a] testate or intestate estate which has been closed may be reopened . . . for the purpose of (a) [d]istributing property of the decedent which was not included in the inventory of the estate and is discovered after the estate is closed . . . ." Further, K.S.A. § 59-1501b (1988) provides that ". . . any interested party or any personal representative, legatee, devisee or heir . . ." may petition for such a reopening. It goes on to say that at the reopening hearing the court will determine the distribution of the assets in accordance with the final settlement and then reclose the estate. Finally, K.S.A. § 59-2209 (1988) gives the notice requirements for such a hearing.

According to B-91048, supra, when money is owed to the estate of a decedent, the Finance Center is authorized to pay the money to the executor of the decedent's estate upon presentation of a certified copy of letters testamentary. When the executor has already been discharged before the money is claimed, the amount owed should not be paid until the probate court appoints an administrator de bonis non to make the claim.

As executrix, Arlene Anderson had the authority to claim the money owned to Mrs. Auchard's estate only until she was formally discharged from her duties on August 18, 1986. The Finance Center should not pay the amount owed until the probate court appoints her or someone else as administrator de bonis non to claim the money on behalf of the estate. Then it can be distributed as the statutes cited above provide.

In conclusion, the money owed to Mildred Auchard's estate should be paid to an administrator de bonis non, to be distributed in accordance with final settlement of her estate in the manner prescribed by Kansas law.

*Milton J. Fowler*

Acting Comptroller General  
of the United States